

New York City Office of Administrative Tax Appeals

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The proposed rules amend sections 4-12 and 4-13 of Title 21 of the Rules of the City of New York, the New York City Tax Commission's ("Tax Commission") Rules, by adding new sections 4-12(l) and 4-13(d). The proposed amendments clarify existing policy and practice in light of the Appellate Division's decision in Drug Policy Alliance v. NYC Tax Commission, 191 A.D.3d 405 (1st Dept 2021). Specifically, the proposed rules make clear that only final determinations on exemption applications, which are signed by the President of the Tax Commission, can be issued as offers. Such offers cannot be revoked except as provided in section 4-12(k)(2). The amendments also clarify that final determinations on exemption applications are not subject to reconsideration by the President for manifest and substantial error.

When and where is the hearing? The Tax Commission will hold a public hearing on the proposed rule. The public hearing will take place at 9 a.m. on September 19, 2022. The hearing will be in the Tax Commission's hearing room at One Centre Street, Room 2405, New York, N.Y. 10007.

This location has the following accessibility option(s) available: Accessibility Not Applicable.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Tax Commission through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to the Tax Commission through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Mail.** You can mail comments to Frances J. Henn, President of the Tax Commission, Office of Administrative Tax Appeals, 1 Centre Street, Room 2400, New York, NY 10007.
- **Fax.** You can fax comments to Frances J. Henn, at 212-669-2211.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by emailing tcinfo@OATA.nyc.gov. You can also sign up in the hearing room before the hearing begins on September 19, 2022. You can speak for up to three minutes.

Is there a deadline to submit comments? The deadline for written comments is 1pm on September 19, 2022.

Do you need assistance to participate in the hearing? You must tell the Tax Commission, Office of the President if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by emailing

tcinfo@OATA.nyc.gov. You may also tell us by telephone at 212-669-2070. You must tell us by September 12, 2022.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at One Centre Street, Room 2400, New York, N.Y. 10007.

What authorizes the Tax Commission to make this rule? Section[s] 1043 and section 164 of the City Charter authorize the Tax Commission to make this proposed rule. The proposed rule was not included in the regulatory agenda.

Where can I find the Tax Commission's rules? The Tax Commission rules are in title 21 of the Rules of the City of New York.

What rules govern the rulemaking process? The Tax Commission must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The rules that the Tax Commission is seeking to amend are contained within Chapter 4 of Title 21 of the Rules of the City of New York, relating to “Determinations”. The amended rules clarify the Tax Commission’s longstanding practice in issuing, in connection with its processing of exemption applications, only final determinations signed by the President. The Tax Commission does not issue the recommended determinations of hearing officers on exemption applications. The need for clarification in the Tax Commission’s rules of its longstanding practice of issuing only final exemption determinations is in light of the Appellate Division’s decision in Drug Policy Alliance v. NYC Tax Commission, 191 A.D.3d 405 (1st Dept. 2021).

Exemption applications and valuation claim applications are treated differently under sections 4-12 and 4-13 based on long-standing policy. The Tax Commission processes more than 57,000 valuation claim applications each year. To issue timely offers on these applications, and more efficiently use resources to process them, offers on valuation claims are not final determinations and may be revoked by the Tax Commission.

In contrast, the Tax Commission processes approximately 140 exemption applications per year. Unlike valuation claims, exemption determinations must be reviewed and approved by the President before they can be issued as offers to the applicant. Exemption applications are first reviewed by a hearing officer who submits a recommended determination to the President for approval and signature. These recommended exemption determinations are not final and cannot be issued as offers until they are signed by the President.

The proposed rules do not change an existing policy or practice before the Tax Commission, but merely clarify what has been the longstanding practice. That is, only final determinations on exemption applications as defined by sections 165 and 166 of the Charter, and which are signed by the President of the Tax Commission, may be issued as offers to applicants pursuant to Section 4-12 of the Tax Commission Rules. Where an exemption application includes a valuation claim, a final determination of the exemption application, signed by the President, is also an approval of the valuation claim and, therefore, constitutes a final determination of both claims. As a final determination, the offer extended by the Tax Commission on an exemption application may only be revoked by the Tax Commission within the six-year period described in section 4-12(k)(2) on the grounds stated in that provision.

The proposed rules also state that Section 4-13 does not apply to determinations on exemption applications, making it clear that applicants cannot request reconsideration of the merits of a final exemption determination by a showing of manifest and substantial error. Unlike determinations on valuation claims, which are not final determinations and may be revoked by the Tax Commission, exemption determinations are final determinations approved and signed by the President for which reconsideration is unavailable.

The Tax Commission’s authority for these rules is found in section 164 of the New York City Charter.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 4-12 of Chapter 4 of Title 21 of the Rules of the City of New York is amended to add a new subdivision (l) to read as follows:

§4-12 Offer and Acceptance.

(l) This section shall not apply to determinations on applications claiming full or partial exemption, except to final determinations signed by the President. Paragraph (1) of subdivision (k) shall not apply to final determinations described in this subdivision.

Section 4-13 of Chapter 4 of Title 21 of the Rules of the City of New York is amended to add a new subdivision (d) to read as follows:

§4-13 Reconsideration for Manifest and Substantial Error.

(d) This section shall not apply to determinations on applications claiming full or partial exemption, regardless of whether the application also claims a reduction in assessed value.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Rules Relating to Determinations of Tax Commission

REFERENCE NUMBER: 2022 RG 054

RULEMAKING AGENCY: Tax Commission

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: July 12, 2022

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Rules Relating to Determinations of Tax Commission

REFERENCE NUMBER: OATA-3

RULEMAKING AGENCY: Office of Administrative Tax Appeals

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

July 13, 2022
Date